

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Johnnie Frazier, #265586,

Plaintiff,

vs.

Judge James W. Johnson, Solicitor C. Dayton
Riddle, and Solicitor David M. Stumbo,

Defendants.

Civil Action No. 3:18-cv-2320-CMC

ORDER

This matter is before the court on Plaintiff's Complaint pursuant to 42 U.S.C. § 1983. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings. On August 28, 2018, the Magistrate Judge issued a Report recommending this matter be summarily dismissed without prejudice and without issuance and service of process based on judicial and prosecutorial immunity, and on the "favorable termination" requirement in *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). ECF No. 8. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff did not file objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28

U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After considering the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the Report’s recommendation the case be dismissed. As noted by the Magistrate Judge, the Judges and Prosecutors are entitled to judicial and prosecutorial immunity. Further, a claim for damages and injunctive relief related to prosecution of criminal charges is barred by *Heck* because Plaintiff has not shown he has successfully challenged his conviction. It does not appear Plaintiff would be able to amend his Complaint to allege any facts that would allow him to sue these Defendants.

Accordingly, the court adopts the Report by reference in this Order. This matter is hereby dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 19, 2018